went on to Vienna, Austria, where they took up a residence. They were regarded by relatives and acquaintances as married; and the "husband" afterward, in official documents, referred to himself as a married man. After his death, in Vienna, his father petitioned to be appointed administrator of his estate. The "widow" contested. A stipulated translation of the relevant sections of the German Code was filed. The translation was ambiguous: under one construction the marriage was void; but under the other it was to be governed by Minnesota law (the law of the domicile), and would be valid as a common law marriage. (R. S. Minn. 1905, § 3566). *Held,* that as the German law, as proved, did not clearly show that the marriage was void where celebrated, the court will presume that the marriage was valid. *In re Lando's Estate* (1910), — Minn. —, 127 N. W. 1125.

The legality of a marriage must be determined by the law of the place in which it is performed. *Ollschlager's Estate* v. *Widmer* (1909), — Ore. —, 105 Pac. 717; *Reifschneider* v. *Reifschneider,* 241 Ill. 92, 89 N. E. 255. Unless contrary to the well defined public policy of forum, *Johnson* v. *Johnson* (1910), — Wash. —, 106 Pac. 500; *Lanham* v. *Lanham,* 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804. The presumption of validity of a marriage is one of the strongest known to the law. *Maier* v. *Brock, 222* Mo. 74, 120 S. W. 1167. A foreign statute must be proved like any other question of fact. *Electric Welding Co.* v. *Prince,* 200 Mass. 386, 86 N. E. 947. The Minnesota statute above cited is unusual. It provides that no marriage solemnized before a person professing to have authority to perform it shall be void for lack thereof, if consummated in the full belief by the parties, *or either of them,* that they have been legally married. The opinion illustrates the ingenuity which courts employ in upholding marriages of doubtful validity.

MASTER AND SERVANT—MASTER'S LIABILITY FOR INJURY TO THIRD PERSON CAUSED BY SERVANT.—Defendant's servants were in the habit of maliciously throwing missiles from defendant's factory onto the adjoining premises leased by plaintiff's husband. The master had been notified but the precautions taken to stop the practice were ineffective. Plaintiff was injured by one of said missiles. *Held,* that the master is liable; but the judges differed as to whether the ground of his liability was negligence or nuisance. *Hogle* v. *H. H. Franklin Mfg. Co.* (1910), — N. Y. —, 92 N. E. 794.

On facts like these, if the judgment is to square up with the fundamental equities of the case, it must be in favor of the plaintiff, but on what ground it should be placed is difficult of decision. There is no question that the facts constitute a nuisance, and that a recovery should be allowed on that ground, if this plaintiff is a proper party to maintain the action. The courts differ on whether the plaintiff must have an estate or a legal interest in adjoining premises, in order to maintain such an action when the nuisance does not operate to injure property. (For the two views, see *Ellis* v. *Kansas City Ry.,* 63 Mo. 131, and *Fort Worth etc. Ry.* v. *Glenn,* 97 Tex. 586). The view allowing the plaintiff to sue seems to be the better on principle. *Shipley* v. *Fifty Associations,* 106 Mass. 194. To place the decision on the

ground (as some of the judges in the principal case seem to have done) that the defendant is liable, because he has control of the servant, whether the servant was acting in the scope of his employment or not, is to apply the broad test of the *course* of employment. On this point the courts are in hopeless conflict. See 1 JAGGARD, TORTS, p. 257. Again, the decision might be placed on the liability of a landowner for *anything* brought on the premises. *Fletcher* v. *Rylands,* L. R. 1 Exch. 265, is the leading case on this point. But this case has been greatly modified by some courts, notably in the jurisdiction of the principal case, *Losee* v. *Buchanan,* 51 N. Y. 476, and the doctrine is there restricted to dangerous agencies, as fire and explosives. In New York, therefore, in order to base the decision on the latter ground, it would be necessary to hold that the factory hands were dangerous, that holding being based on the fact that the defendant knew their characteristics. The latter ground for the decision was not discussed in the principal case, but is merely suggested as a possible solution.

MASTER AND SERVANT—UNLAWFUL SALES OF INTOXICATING LIQUORS BY DRUG CLERK—CRIMINAL LIABILITY.—On a trial of a druggist for unlawful sale by clerk, under statute forbidding "liquors to be sold or given away in any drug store," *Held,* by the majority, that the owner is liable to prosecution, notwithstanding he was ignorant of the sale and that the clerk disobeyed orders. *Walters* v. *State* (1910), — Ind. —, 92 N. E. 537.

Did the legislature, by this statute, intend to make the master liable? Some writers state that there is a conflict in the construction of such statutes. CLARK AND MARSHALL, LAW OF CRIMES, 265. There are a large number of cases apparently bearing out such a statement. But when closely scrutinized many of them will be found to be based on materially different statutes. For instance, a statute providing "a sale by a clerk shall be deemed to be the act of the keeper," *State* v. *McGinnis,* 38 Mo. App. 15. Or imposing a penalty on one "who sells by himself or another," *Cloud* v. *State,* 36 Ark. 151; *Snider* v. *The State,* 81 Ga. 753. And so under a statute subjecting to its penalty, "any person who may own * * * liquor sold contrary to this act." *Fahey* v. *State,* 62 Miss. 402. Or making it a crime to sell, "either directly or indirectly." *State* v. *Kittelle,* 110 N. C. 560. And so if the statute requires that all saloons shall be closed on Sunday, and makes "any" saloon keeper punishable for a violation. *People* v. *Roby,* 52 Mich. 577. It is easy to see that in the above cases the intention of the legislature was to punish the *owner* of the saloon, etc. But in the principal case it is merely the "sale" or "giving away" that is forbidden. Starting with the common law rule that one is not criminally liable for the acts of another, and keeping in mind the fact that criminal laws are to be strictly construed, it would seem that stronger language than that in the Indiana statute should be required in order to make the owner criminally liable. There is much force in the words of the dissenting opinion, "It is better that the well settled rules of our criminal law be inflexibly maintained, instead of bending or modifying them to sustain some particular case. It is the wrong decision of today which becomes the bad precedent of tomorrow."